

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

MASON SOUZA,

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Petitioner,

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No. 08-517V

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Special Master Christian J. Moran

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v.

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Filed: January 12, 2010

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SECRETARY OF HEALTH

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AND HUMAN SERVICES,

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Ruling on the record; tetanus

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vaccine; systemic lupus

Respondent.

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erythematosus

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UNPUBLISHED DECISION¹

On July 16, 2008, Mr. Souza filed a petition seeking compensation under the National Vaccine Injury Compensation Program (“the Program”). Mr. Souza alleged that a tetanus vaccination that he received on July 18, 2005, caused him to suffer from systemic lupus erythematosus and severe joint inflammation. The information in the record, however, does not show entitlement to an award under the Program.

To receive compensation under the Program, a petitioner must prove either: 1) he suffered a “Table Injury” - i.e., an injury falling within the Vaccine Injury Table – corresponding to one of the vaccinations in question, or 2) that any of her medical problems were actually caused by the vaccine. See 42 U.S.C. §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). An examination of the filed medical records, however, did not uncover any evidence that Mr. Souza suffered a “Table Injury.” Furthermore, the records do not contain a medical expert’s opinion indicating that any of Mr. Souza’s problems were related to the vaccine in question.

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002).

All decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, the person submitting the information has 14 days to identify and to move to delete such information before the document’s disclosure. If the special master agrees that the identified material fits within the categories listed above, the special master shall redact such material from public access. 42 U.S.C. § 300aa-12(d)(4)(B); Vaccine Rule 18(b).

Under the statute, a petitioner may not be given a Program award based solely on the petitioner's claims alone. Rather, the petition must be supported by either the medical records or by the opinion of a competent physician. 42 U.S.C. § 300aa-13(a)(1). Here, because the medical records do not seem to support the petitioner's claims, a medical opinion must be offered in support. Petitioner, however, offered no such opinion.

In a motion filed on December 11, 2009, petitioner's counsel requested a ruling on the record as it now stands, and acknowledged that petitioner "has been unable to secure an expert report and will therefore be unable to prove that he is entitled to compensation." The court hereby grants petitioner's motion for ruling on the record and makes its decision based on the written filings. Vaccine Rule 8(d).

Under the law, compensation may only be awarded when a medical condition either falls within one of the "Table Injury" categories, or is shown by competent medical opinion to be vaccine-caused. No such proof exists in the record. Accordingly, it is clear from the record that Mr. Souza has failed to demonstrate either that he suffered a "Table Injury" or that her condition was "actually caused" by a vaccination.

Therefore, the only alternative remains is to DENY this petition. In the absence of a motion for review, the clerk is directed to enter judgment accordingly.

IT IS SO ORDERED.

S/ Christian J. Moran

Christian J. Moran
Special Master